of the testator who made it, and thus enable the court to understand the meaning and application of the language he has adopted. *Griscom* v. *Erens*, 11 Vroom (N. J.) 402, 29 Am. Rep. 251; *Waldron* v. *Waldron*, 45 Mich. 350; *Charter* v. *Charter*, L. R. 7 H. L. 364; *Gallup* v. *Wright*, 61 How. Pr. 286; *Pickering* v. *Pickering*, 50 N. H. 349. Extrinsic evidence is not admissible to explain a patent ambiguity on the face of a will. *Breckenridge* v. *Duncan*, 2 A. K. Marsh (Ky.) 50, 12 Am. Dec. 359; *Taylor* v. *Maris*, 90 N. C. 619. In the principal case the court held the ambiguity to be latent because discoverable only upon ascertaining that there were several pieces of property so numbered in the county. A latent ambiguity in a will as to the person or property to which it applies may be removed by extrinsic evidence. *Patch* v. *White*, 117 U. S. 210; *Whitcomb* v. *Rodman*, 156 Ill. 116, 47 Am. St. R. 181; *Brownfield* v. *Brownfield*, 12 Pa. St. 136, 51 Am. Dec. 590; *Eckford* v. *Eckford*, 91 Ia. 54; *Morgan* v. *Burrows*, 45 Wis. 211, 30 Am. Rep. 717.

WILLS—PRESUMPTIONS WHERE SECOND WILL NOT FOUND BUT SHOWN TO HAVE BEEN ACCESSIBLE TO BENEFICIARY UNDER FIRST.—Decedent had made a will favorable to appellee, known as the "Rulo" will. Appellee knew the contents of the will and after the death of testator found the will in a hotel formerly visited by testator, under "extraordinary" or suspicious circumstances. Appellee secured probate of this will. Appellants brought suit to have the order admitting the will to probate vacated and set aside on the ground that appellee secured and fraudulently withheld a later will alleged to have revoked the former will. *Held*, that even though there was some circumstantial evidence which might create a suspicion that the later will had been where appellee could have had access to it, there was insufficient evidence even to warrant considering the question of fraudulent withholding or destruction. *Williams* v. *Miles* (1903), — Neb. —, 94 N. W. Rep. 705.

The holding seems fair and reasonable and warrants comment only because the courts usually have been very strict in considering such evidence against the beneficiaries. Thus, it has been held that where the record contains grounds for argument that the papers of the testator, including the second will, fell under the control of the proponents at his death, such facts must be considered. *Stevens* v. *Hope*, 52 Mich. 65, 17 N. W. 698; *Throckmorton* v. *Holt*, 180 U. S. 552, 582. Where the second will cannot be found, and the question is what became of it, the first presumption is that it was in the possession of the testator, and that he cancelled it; but if it was in the possession of parties whose interests were adverse to it, proof ought to be given on the subject, and in the absence of proof is an argument against the presumption. *Jones* v. *Murphy*, 8 W. & S. (Pa.) 275.

WILLS—REVIVAL OF PRIOR ON DESTRUCTION OF REVOKING WILL.—A suit was brought to have an order admitting a certain will to probate vacated and set aside. *Held*, that where a testator destroys a subsequent will revoking a former one, the question whether the former will is revived, in such a case depends upon the intention of the testator which is to be deduced from all the circumstances. *Williams* v. *Miles* (1903), — Neb. — 94 N. W. Rep. 705.

Although the holding on this point was not necessary to the case, as the court decided that there was insufficient evidence of a revocation of the first will by the second, the point is an interesting one upon which there is much diversity of decision. The holding of the principal case is that of the ecclesiastical courts. *Usticke* v. *Bawden*, 2 Addams (Eng. Eccl.) 116. The common law rule as laid down by Lord Mansfield is that the destruction of the

revoking will, if first is preserved, revives the original will. *Harwood* v. *Goodright*, 1 Cowp. 87; *Taylor* v. *Taylor*, 2 Nott. & McC. (S. C.) 482; *Randall* v. *Beatty*, 31 N. J. Eq. 643; *Peck's Appeal*, 50 Conn. 562, 47 Am. Rep. 685. The revocation of one will by another is complete as soon as the last will is duly executed, and does not depend upon the continuance in force of the second will until the death of the testator. *James* v. *Marvin*, 3 Conn. 576; *In re Noon's Will*, 91 N. W. 670, 115 Wis. 299. A destroyed revoking will is not one of the statutory ways of revoking a will and therefore the first will stands. *Stetson* v. *Stetson*, 200 Ill. 601, 66 N. E. 262. Under the New York statute the revocation of a revoking will does not revive the first unless it is republished with all the formalities necessary to the making of a will. *In re Brewster's Estate*, 76 N. Y. S. 283, 72 App. Div. 587. Adopting the holding of the ecclesiastical courts are: *In re Gould's Will*, 72 Vt. 316, 47 Atl. 1082; *McClure* v. *McClure*, 86 Tenn. 173, 6 S. W. 44; *Harwell* v. *Lirely*, 30 Ga. 315, 76 Am. Dec. 649; *Williams* v. *Williams*, 142 Mass. 515, 8 N. E. 424; *In re Barne's Will*, 75 N. Y. S. 373, 70 App. Div. 523, 10 N. Y. Ann. Cas. 432; 1 WOERNER, THE. AMER. LAW OF ADMIN., 2nd ed. § 52. The holding of the principal case seems to be in harmony with the weight of authority and is founded upon sound reason.